REMARKS/ARGUMENTS

This paper is responsive to the Office Action dated January 21, 2004 having a shortened statutory period expiring on April 21, 2004, wherein:

Claims 1, 146-167 were previously pending in the application;

Claims 1, 156, and 167 were objected to; and

Claims 1, 146-167 were rejected.

No claims have been amended, added, or canceled by this amendment. Accordingly, claims 1, 146-167 are currently pending in the above-identified patent application.

Claim Objections

In the present Office action, claims 1, 156, and 167 were objected to as being not clearly defined by stating "a port failure of a first port". Applicants respectfully submit that the claim element in question, "detecting a port failure of a first port" merely recites the detection of a specific failure type "a port failure" as distinguished from other failure types (e.g., transmission media, signal, etc.) and a specific port "a first port" as distinguished from other ports (e.g., a second port) recited within Applicants' claim(s). Applicants respectfully submit that the indicated claims and claim elements are sufficiently clear for purposes of 35 U.S.C. §112, second paragraph and request that the Examiner indicate with greater specificity how he believes the described claims are objectionable.

Rejection of Claims under 35 U.S.C. §103

In the present Office Action, claims 1, 156, and 167 were rejected under 35 U.S.C. §103(a), as being unpatentable over United States Patent No. 5,987,526, issued to Morales (hereinafter "*Morales*") in view of United States Patent No. 5,513,345, issued to Sato et al. (hereinafter "*Sato*"). While not conceding that the Examiner's cited reference(s) qualify as prior art, but instead to expedite prosecution, Applicants have

chosen to respectfully disagree and to traverse the Examiner's rejection as follows. Applicants reserve the right, for example, in a continuing application, to establish that one or more of the Examiner's cited references do not qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed.

Applicants respectfully submit that in the present Office Action the Examiner fails to state a *prima facie* case of obviousness, that neither *Morales, Sato,* nor their combination teaches, shows, or suggests "transferring a restoration message packet" where the transferring is performed "in response to a determination that at least one alternate port is available" as required by Applicants' claim(s), and that it would not have been obvious to one or ordinary skill in the art at the time of Applicants' invention to combine the teachings of *Morales* and *Sato* as suggested in the present Office Action.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2143-2143.03.

In the present Office Action, the Examiner states with respect to Applicants' claim 1 that,

> Morales discloses, in Fig. 1, a failed port 112 coupled to a PVC 114 is detected (detecting a port failure). A port 113 is selected as an alternate port (identifying a second port as one alternate port) which is coupled to PVC 115. Packets previously sent from port 111 to port 112 via PVC 114 are now sent to port 113 via PVC 115 (restore virtual path via PVC 115 to the second port). See col. 5, lines 20-30.

Applicants respectfully submit that "identifying a second port as one alternate port" has not been claimed. Rather, Applicants' claims recite, "identifying said second

port within said link in response to said transferring" and "in response to a determination that at least one alternate port is available within said link, restoring said virtual path to a second port of said at least one alternate port" (Applicants' claim 1, as previously presented, emphasis supplied). Applicants respectfully submit that the Examiner has failed to specifically indicate where within the cited references "a determination that at least one alternate port is available" is taught, shown, or suggested as required by 37 C.F.R. §1.104(c)(2) and that, in failing to so indicate, the Examiner has not established a *prima facie* case of obviousness.

Moreover, Applicants respectfully submit that the Examiner's cited portion of *Morales* fails to teach, show, or suggest either a <u>selection</u> of port 113 as an alternate port or "identifying a second port as one alternate port" as indicated in the present Office Action. *Morales* teaches a permanent virtual connection (PVC) 114 between port 111 and port 112 and a PVC 115 between port 111 and port 113 where data packets are sent via PVC 114 before a failure is detected and via PVC 115 after a failure is detected (*Morales*, Fig. 1, Fig. 5, Column 5, Lines 9-29). The Examiner's cited portions of *Morales* fail to teach, show, or suggest the <u>selection</u> or <u>identification</u> of port 113 as an alternate port.

Applicants further submit that neither *Morales, Sato,* nor their combination teaches, shows, or suggests "transferring a restoration message packet" where the transferring is performed "in response to a determination that at least one alternate port is available" as claimed. With regard to the claimed "transferring" the Examiner admits in the present Office Action that, "Morales does not disclose transferring a restoration message packet" but states that such a limitation is taught by *Sato*, indicating column 34, lines 10-25 and Figs. 2, 10, and 31. Applicants respectfully disagree.

Figs. 2, 10, and 31 of *Sato* teach, "a flow chart of the stage for initiation of failure restoration processing", "a view of a scenario (1) of a network in the present invention", and "a table of a restoration message transmitted to the link L9→10", respectively. At column 34, lines 10-25, *Sato* teaches,

A system for searching for alternative routes in a network...wherein, a node detecting a failure in a link or in a node executes a stage for initiation of failure restoration processing in accordance with an initiation message to determine and bundle the failed paths and create and send a restoration message for searching for alternative routes, a node receiving the restoration message executes a stage for processing the restoration message to send back an acknowledgement message for reserving an alternative route when that node is a candidate as a chooser node stated in the restoration message and relays the restoration message on when the node is not a candidate as a chooser node...

Therefore, while *Sato* teaches a restoration message, it also clearly teaches that this restoration message is sent <u>in order to search for alternative routes</u> and not in response to "a determination that at least one alternate port is available" as claimed by Applicants. Consequently, Applicants submit that neither *Morales* (as admitted by the Examiner in the present Office Action) nor *Sato* (as shown herein by Applicants) teach, show, or suggest, and therefore that no combination of *Morales* and *Sato* may be construed as teaching, showing, or suggesting, "transferring a restoration message packet" where the transferring is performed "in response to a determination that at least one alternate port is available" as claimed.

In the present Office Action, the Examiner states with respect to the combination of *Morales* and *Sato* that, "it would have been obvious to one of ordinary skill in the art to apply the restoration message of Sato et al. in Morales...<u>to search for an alternate port and restore the virtual path linking the two nodes together</u>" (emphasis supplied). Applicants respectfully disagree. Applicants respectfully submit that the Examiner has merely restated his interpretation of the teachings of *Sato* and has failed to provide any suggestion or motivation, found either in the Examiner's cited references themselves or in the knowledge of one or ordinary skill at the time of Applicants' invention, to use a restoration message as taught by *Sato* to search for an alternate port in combination with the teaching of *Morales*. Accordingly, Applicants submit that the present Office Action fails to provide a sufficient suggestion or motivation to combine the teachings of *Morales* and *Sato* as required by 35 U.S.C. §103.

Moreover, Applicants respectfully submit that it would not have been obvious to one or ordinary skill in the art at the time of Applicants' invention to combine the teachings of *Morales* and *Sato* notwithstanding the lack of a sufficient suggestion or motivation to do so. As previously described herein, *Sato* teaches, "a node <u>detecting a failure</u> in a link or in a node executes a stage for initiation of failure restoration processing in accordance with an initiation message to...send a restoration message for searching for alternative routes..." (*Sato*, Column 34, lines 14-18 emphasis supplied, see also *Sato* Fig. 2). By contrast, *Morales* teaches first and second permanent virtual connections (PVCs) which are provisioned <u>prior to the detection of a failure</u> where, "Initially, the first PVC and the first interface are used to transmit data...while the second PVC is provisioned but not actually used to transmit data..." and once a failure is detected, "the data is automatically rerouted to the second PVC and the second interface" (*Morales*, Column 3, Lines 48- 67, see also *Morales*, Fig. 5).

Applicants respectfully submit that since *Morales* teaches that the second PVC (and any component ports thereof) are known prior to the detection of a failure, and *Sato* teaches that any alternative routes (and any components thereof) are unknown until after a failure is detected, sending a restoration message as taught by *Sato* would be unnecessary within the teaching of Morales, "to search for an alternate port and restore the virtual path linking the two nodes together." Accordingly, Applicants respectfully submit that it would not have been obvious to one or ordinary skill in the art at the time of Applicants' invention to combine the teachings of *Morales* and *Sato*.

For at least the foregoing reasons, Applicants submit that Applicants' claim 1 and all claims depending directly or indirectly therefrom are allowable over the Examiner's cited references and request that the Examiner's rejection(s) and objection(s) be withdrawn. Applicants' claims 156 and 167 (and all claims depending directly or indirectly therefrom) each contain one or more limitations substantially similar to those described with respect to Applicants' claim 1 and are therefore allowable for at least those reasons stated for the allowability of claim 1.

CONCLUSION

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5097.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Non-Fee Amendment, COMMISSIONER FOR PATENTS, P. O. Box 1450, Alexandria, VA, 22313-1450, on April 21, 2004.
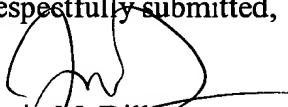
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Attorney for Applicant(s)   Date of Signature

Respectfully submitted,

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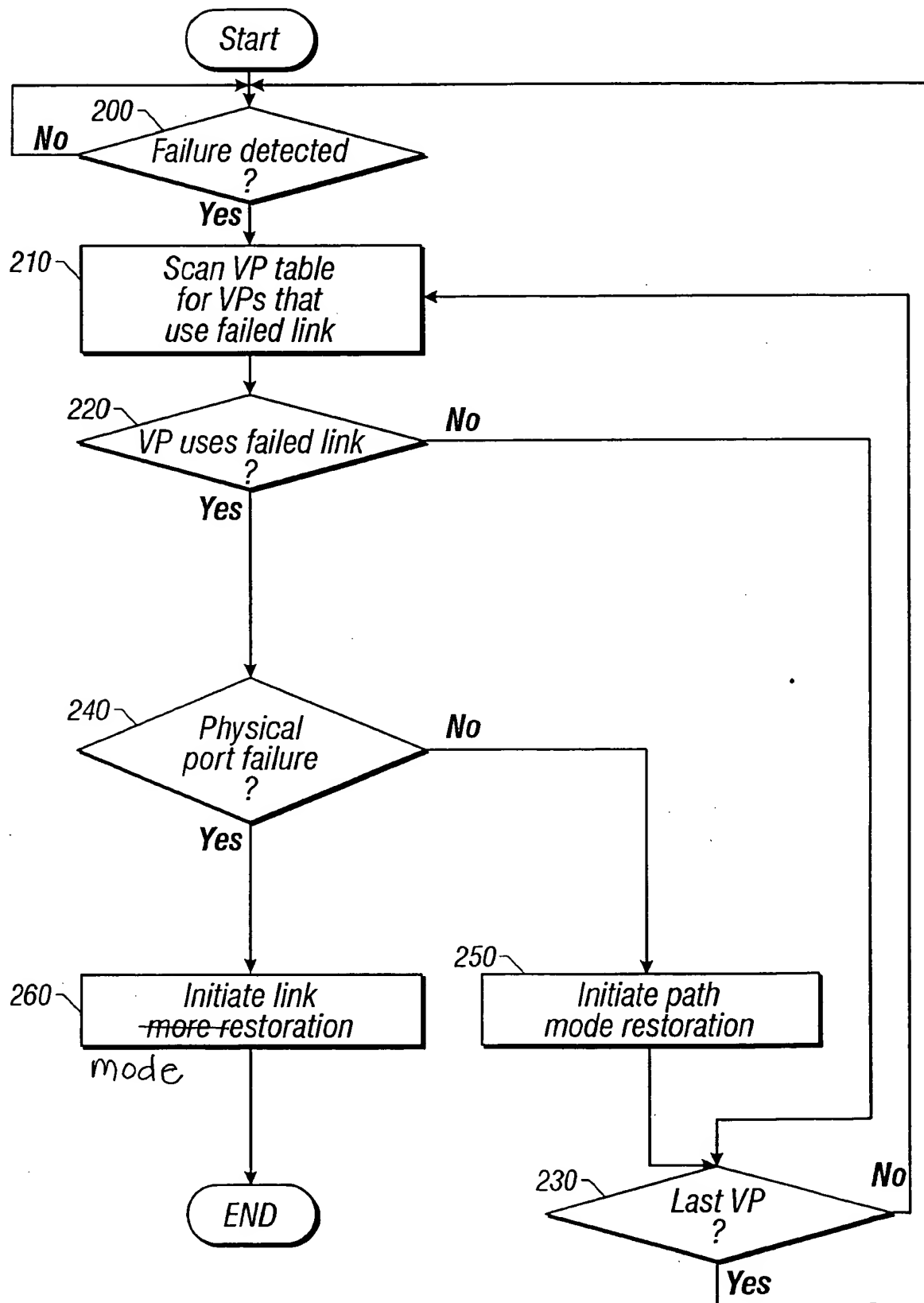(512) 439-5097 [Phone]
(512) 439-5099 [Fax]

Approved
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                    Start

No    200
      Failure detected ?
              Yes

210   Scan VP table
      for VPs that
      use failed link

220   VP uses failed link ?    No
              Yes

240   Physical
      port failure ?           No
              Yes

260   Initiate link            250   Initiate path
      more restoration               mode restoration
      mode

      END                      230   Last VP ?   No
                                            Yes
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FIG. 2